

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

WISCONSIN ENERGY CORPORATION, :
 INTEGRYS ENERGY GROUP, INC., :
 PEOPLES ENERGY, LLC, THE PEOPLES :
 GAS LIGHT AND COKE COMPANY, :
 NORTH SHORE GAS COMPANY, ATC :
 MANAGEMENT INC., and AMERICAN :
 TRANSMISSION COMPANY LLC :
 : Docket No. 14-0496

Application pursuant to Section 7-204 of the :
 Public Utilities Act for authority to engage in a :
 Reorganization, to enter into agreements with :
 affiliated interests pursuant to Section 7-101, :
 and under the Public Utilities Act to effectuate :
 the Reorganization. :

**JOINT APPLICANTS' RESPONSE TO GCI'S MOTION
 TO REMOVE THE CONFIDENTIAL DESIGNATION
FROM THE LIBERTY INTERIM AUDIT REPORT**

Wisconsin Energy Corporation ("WEC"), Integrys Energy Group, Inc. ("Integrys"), Peoples Energy, LLC ("Peoples Energy"), The Peoples Gas Light and Coke Company ("Peoples Gas"), North Shore Gas Company ("North Shore"), ATC Management Inc. ("ATC Management"), and American Transmission Company LLC ("ATC"), together, the "Joint Applicants," hereby respond to the "Motion to Remove the Confidential Designation from the Liberty Interim Audit Report ("Motion") filed by "GCI".¹ The Motion is inconsistent with the Illinois Commerce Commission's (the "Commission" or "ICC") Order establishing the Liberty audit, inconsistent with the audit process, and essentially ignores that the Liberty **final** report for Phase I of the audit will be made public in the relatively near future, as the Commission ordered. Furthermore, the Motion serves no useful purpose in relation to this Docket, dwells on contentions that are not relevant to whether the Liberty Interim Report should retain its

¹ The Illinois Attorney General's Office (the "AG"), the City of Chicago (the "City"), and the Citizens Utility Board ("CUB"), together "the Governmental and Consumer Intervenors" or "GCI".

confidential designation, fails to discuss the governing law (including Section 4-404 of the Public Utilities Act (the “Act”), 220 ILCS 5/4-404), and instead discusses inapplicable law. The Motion should be denied.

The Commission’s Order and Generally Accepted Government Auditing Standards

1. The Commission ordered the Liberty audit in the 2012 rate cases of Peoples Gas and North Shore. *North Shore Gas Co., et al.*, ICC Docket Nos. 12-0511, 12-0512 Cons. (Order June 18, 2013) (“*Peoples Gas 2012 Order*”), at 61.

2. The Commission adopted Staff’s recommendation of a two-Phase audit, with (1) Phase I being an investigation of Peoples Gas’ Accelerated Main Replacement Program (“AMRP”) and (2) Phase II being a verification of Peoples Gas’ compliance with the recommendations from the investigation phase. *Peoples Gas 2012 Order* at 46-49 (summary of Staff proposal and evidence), 61 (Commission Analysis and Conclusion).

3. The Commission specifically provided that the **final** report of each Phase would be made public. “For reasons detailed in Staff witness Buxton’s rebuttal testimony (Staff Ex. 20.0 at 23-24) and immediately above, this Commission adopts Staff’s proposed two-phase investigation of the AMRP under Section 8-102 of the Act (220 ILCS 5/8-102) **ending in a public document report.**” *Peoples Gas 2012 Order* at 61 (emphasis added).

4. The Motion repeatedly indicates that the Commission ordered a public report (e.g., Motion at 3), but it never comes to grips with the fact that the Commission’s order applies to the final report for each Phase.

5. The Commission did not order an interim report, much less direct that it be made public.

6. The primary purpose of the Liberty Interim Report was to further the positive results of the collaboration between Liberty and Peoples Gas and to begin implementation of certain items before the 2015 construction season. *See* Stoller Rebuttal (“Reb.”), Staff Ex. 8.0, Attachment A (the Liberty Interim Report). Liberty did not recommend that the Commission publish the report. It is reasonable to assume that it was not drafted nor intended to be made public. Staff designated the report as confidential, in accordance with the protective order in this case.²

7. The Interim Report meets the requirements for “Confidential” treatment under the terms of the Protective Order in this case. There is a legitimate business interest in maintaining the confidentiality of preliminary audit reports that are not complete. Interim reports “**to appropriate entity officials**” are provided for under the Generally Accepted Government Auditing Standards (“GAGAS”). Government Auditing Standards (2011 Revision), at Appendix I (Supplemental Guidance), Section A7.02(g) (emphasis added). As the GAGAS provide, a report quality element is that it be “complete,” which means that “the report states evidence and findings *without omission of significant relevant information related to the audit objectives*. *Id.* at p. 213 (emphasis added). An interim report, by its very nature, is not complete. Liberty itself stated: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

² On September 4, 2014, the Administrative Law Judges (“ALJs”) granted the Joint Applicants’ August 7, 2014, Motion for Entry of Protective Order. There were no objections. Transcript 9/4/14 at 7. The protective order did not require Staff to discuss the grounds for confidentiality when making the designation.

██████ Liberty Interim Report, p. S-1 (emphasis added). [END CONFIDENTIAL] A link to the Standards, which also are referred to as the “The Yellow Book”, may be found at <http://www.gao.gov/yellowbook/overview>. The Joint Applicants certainly have a legitimate business interest in maintaining the confidentiality of a preliminary, incomplete report that [BEGIN CONFIDENTIAL] does not present both the strengths and weaknesses of the AMRP. [END CONFIDENTIAL]

8. The Joint Applicants anticipate that there will be no issue with respect to the public nature of the Liberty Phase I final report, assuming that it does not contain any critical infrastructure information (“CII”) that needs to be protected for security reasons, and subject to redaction of any third party commercially sensitive data. The Joint Applicants do not anticipate that CII will be included, and, even in that event, they anticipate that any CII very likely would be only a tiny portion of the report.

9. The Joint Applicants currently anticipate that the Liberty Phase I final report will be issued no later than mid-June 2015, which is only five months from now. Thus, the public soon will have access to final information regarding the Phase I investigation of the AMRP.

10. The Liberty Phase I final report presumably will reflect the full and proper operation of the applicable audit standards and processes, which are intended to result in a complete and accurate report that reflects the work of the auditors and their consideration of input from the audited entity. In contrast, the Liberty Interim Report, by definition, is not a final and complete determination of all of the matter being audited in Phase I.

11. While the Commission’s Order does not legally preclude the granting of the Motion, the Order along with the interim nature of the document constitute sound reasons for the confidentiality designation and not to revisit the Commission’s determination to make public the

final report for each Phase. The Motion certainly does not provide any good reason to reach a different outcome. Making the Liberty Interim Report public will not advance the purposes of the audit or this Docket and is only likely to lead to confusion and inefficiency.

The Motion's Factual Discussion Is Not Relevant To Whether the Confidentiality Designation Should Be Removed

12. The relevance of the Liberty Interim Report to this Docket was determined, after briefing, by the ALJ's Ruling of January 14, 2015 (the "Ruling"). The Ruling states in part that: "the scope of testimony, discovery and examination regarding the Liberty Interim Audit Report will be limited to: (1) whether the Joint Applicants are aware of the scope and scale of the potential obligations under AMRP; and (2) whether Joint Applicants are ready, willing and able to implement the AMRP consistent with additional remedies as recommended by the Liberty audit."

13. On January 15, 2015, when Staff filed the Liberty Interim Audit Report, Staff designated it as confidential, as noted earlier. Stoller Reb., Staff Ex. 8.0, Attachment A.

14. The supplemental rebuttal testimony filed by WEC on January 22, 2015, pursuant to the Ruling, speaks for itself. In brief, however, that testimony states in part that:

(1) Wisconsin Energy's management has reviewed the Interim Report to become more aware of the scope and scale of its potential obligations that will exist with respect to the AMRP after approval of the proposed Reorganization.

(2) The Joint Applicants are ready, willing and able to implement the AMRP consistent with Liberty's ultimate recommendations in accordance with the procedures and conditions outlined in Staff's and the Joint Applicants' rebuttal testimony. Wisconsin Energy agrees with the approach for management and implementation of large capital programs that Liberty preliminarily outlines in its report.

(3) While they are in their initial stages and subject to revisions and refinements, Wisconsin Energy intends to fully support the

positive initiatives begun by Integrys and Peoples Gas in collaboration with Liberty after the approval and close of the proposed Reorganization. The Joint Applicants will continue to work with Liberty and Staff to monitor the effectiveness of such initiatives and refine them when and where it is determined that further changes should be made. Wisconsin Energy will provide a continuity of resources necessary to continue making improvements.

Leverett Supplemental Reb., Joint Applicants (“JA”) Ex. 12.0, 2:25-39. In brief, the testimony also discusses WEC’s agreement with various preliminary assessments, conclusions, and recommendations of the Liberty Interim Report, in Mr. Leverett’s testimony and in the supplemental rebuttal of Andrew Hesselbach (JA Ex. 13.0).³

15. The Motion does not identify any respect in which it is claimed that lifting the confidentiality designation will advance the audit or the determination of the matters identified by the Ruling. The Joint Applicants believe there is none, especially in light of WEC’s supplemental rebuttal testimony.

16. The AMRP is important to Peoples Gas and its customers, but the fact that the subject is important does not support the conclusion that the designation of the Liberty Interim Report as confidential should be removed. The Motion consists predominately of contentions regarding its importance and concerns with how the AMRP is being managed. *See, e.g.*, Motion at 2-3. The Motion does not show, however, that those contentions support the request that the designation should be removed, especially when the Liberty Phase I final report will be made public in the relatively near future.

17. The Motion indicates that GCI assume, in brief, that Staff’s reason for the confidentiality designation is that Liberty still is performing the Phase I investigation and that its proposals may be modified. *See* Motion at 4, 5. The Motion does not suggest that those reasons

³ Their testimony is in public and confidential versions, reflecting the confidentiality designation of the Liberty Interim Report.

are incorrect. The Motion suggests that those reasons are inconsistent with the fact that the Commission ordered that the final reports for both Phase I and Phase II be made public, because the recommendations could change in Phase II. The Motion's theory fails to pay any heed to the fact that the two Phases are two different types of investigations, with the focus of the latter being verification. It is possible that developments during Phase II will show that a Phase I recommendation might need to be modified, but that is no reason to infer that the Liberty Interim Report for Phase I should be made public.

18. The Motion (at 4, 5-7) also suggests that the confidentiality designation is contrary to the *Peoples Gas 2012 Order*, based in part on what appears to be the theory that while the Liberty Interim Report is not a final report for Phase I, it is a final interim report. That seems to be word games. The Order makes the final reports public, not interim reports.

19. The Motion (at 6-7) discusses Liberty's reasons for preparing the Interim Report, but nothing in that discussion supports removing the confidentiality designation, especially given WEC's supplemental rebuttal testimony. Indeed, the Motion's reasoning is poor public policy, for it suggests that if an entity that is being audited agrees to measures during the course of an ongoing audit, then the result is to strip prematurely, at least in part, the ordinarily confidential nature of an ongoing audit. That could create a disincentive to such agreements.

20. The Motion (at 7) contends that Staff's confidentiality designation will withhold from the public a report for which customers eventually must pay, but that again ignores that the two final reports will be made public.

Applicable Law

21. Section 4-404 of the Act is its central provision governing confidentiality, and yet, remarkably, it is not mentioned in the Motion. Section 4-404 provides that: "The Commission

shall provide adequate protection for confidential and proprietary information furnished, delivered or filed by any person, corporation or other entity.” 220 ILCS 5/4-404. *See also* 220 ILCS 5/5-108 (limiting release of confidential information).

22. In addition, Section 200.430 of the Commission’s Rules of Practice authorizes the Commission and its Administrative Law Judges to enter protective orders “to protect the confidential, proprietary or trade secret nature of any data, information or studies.” 83 Ill. Adm. Code § 200.430(a).

23. In the instant Docket and numerous other cases, the Commission’s ALJs have entered protective orders essentially identical or highly similar to the protective order entered here. *See, e.g.*, the protective orders in ICC Docket Nos. 01-0423, 05-0159, 05-0597, 06-0560, 07-0241/0242 Cons., 09-0166/0167 Cons., 10-0467, 11-0280/0281 Cons., 11-0721, 12-0321, 12-0511/0512 Cons., 14-0224/14-0225 Cons., and 14-0312. In many of those other cases, the ALJs rejected the same arguments and most of the supporting citations that the Motion presents here.

24. For example, in the 2012 rate cases of Peoples Gas and North Shore, ICC Docket Nos. 12-0511/12-0512 Cons., CUB, in its October 4, 2012, brief arguing for a much narrower confidentiality standard than that proposed by the utilities’ motion for a protective order, cited Sections 5-109 and 10-101 of the Act, 220 ILCS 5/5-109, 10-101; the Freedom of Information Act (“FOIA”); and *In Re the Marriage of Johnson*, 232 Ill. App. 3d 1068, 1072 (1992). The ALJs’ ruling of October 16, 2012, ruled in favor of the utilities.

25. The Motion (at 4, 8-9) cites the above and certain other statutory provisions and cases, but they do not support the Motion. Section 5-109 of the Act applies to reports by utilities. Section 10-101 is about the hearings themselves. Moreover, Section 10-101 does not

mean that confidentiality designations are inappropriate and to read it that way would be an unlawful override of the specific provision on point, Section 4-404. Section 9-102 is about utility tariffs. Section 10-109 is about damage claims against utilities. Section 2-107 is about the public speaking at Commission meetings. None of those Sections overrides Section 4-404. The Commission as well as its ALJs previously have ruled that FOIA does not apply to the confidentiality of a utility's non-public documents, *e.g.*, *Illinois Bell Tel. Co.*, ICC Docket No. 04-0310 (Order Feb. 24, 2005), at 9-10, and there is nothing in FOIA that yields a different outcome as to the Liberty Interim Report. The cases cited by the Motion are about judicial records, and those principles do not apply here, as the ALJ previously has concluded.

26. Finally, the Motion (at 10-11) suggests that the AMRP has safety implications, and it is true that over time the AMRP enhances safety, but that is not a ground for rejecting the confidential designation of the Liberty Interim Report.

THEREFORE, the Joint Applicants respectfully request that GCI's Motion be denied.

Dated: February 3, 2015

WISCONSIN ENERGY CORPORATION

By: 
One of its Attorneys

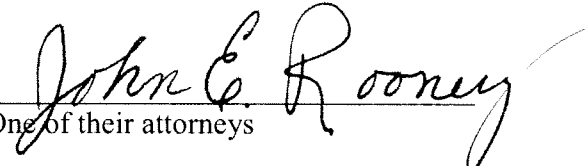
Theodore T. Eidukas
John L. Litchfield
Catherine M. Basic
FOLEY & LARDNER LLP
321 N. Clark St., Suite 2800
Chicago, Illinois 60654
(312) 832-4913
teidukas@foley.com
jlitchfield@foley.com
cbasic@foley.com

E. King Poor
QUARLES & BRADY LLP
300 N. LaSalle St., Suite 4000
Chicago, Illinois 60654
(312) 715-5000
king.poor@quarles.com

Susan H. Martin
WISCONSIN ENERGY CORPORATION
231 West Michigan St.
Milwaukee, Wisconsin 53201
(414) 221-2345

Respectfully Submitted,

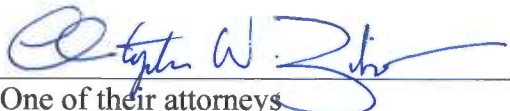
INTEGRYS ENERGY GROUP, INC.
PEOPLES ENERGY, LLC
THE PEOPLES GAS LIGHT AND COKE
COMPANY
NORTH SHORE GAS COMPANY

By: 
One of their attorneys

Jodi J. Caro
M. Gavin McCarty
Mary Klyasheff
INTEGRYS ENERGY GROUP, INC.
200 E. Randolph St., 23rd Floor
Chicago, Illinois 60601
(312) 240-4470
jjcaro@integrysgroup.com
mgmccarty@integrysgroup.com
mpklyasheff@integrysgroup.com

John E. Rooney
John P. Ratnaswamy
ROONEY RIPPKE & RATNASWAMY LLP
350 W. Hubbard St., Suite 600
Chicago, Illinois 60654
(312) 447-2800
john.rooney@r3law.com
john.ratnaswamy@r3law.com

AMERICAN TRANSMISSION COMPANY
LLC
ATC MANAGEMENT INC.

By: 
One of their attorneys

Christopher W. Zibart
AMERICAN TRANSMISSION COMPANY LLC
W234 N2000 Ridgeview Pkwy. Ct.
Waukesha, WI 53188
Tel: (262) 506-6749
czibart@atcllc.com